

(b) *Subpart B.* The purpose of subpart B is to establish the method of determining the value of benefits and assets under terminating single-employer pension plans covered by title IV of ERISA. This valuation is needed for both plans trustee under title IV and plans which are not trustee. For the former, the valuation is needed to allocate plan assets in accordance with subpart A of this part and to determine the amount of any plan asset insufficiency. For the latter, the valuation is needed to allocate assets in accordance with subpart A and to distribute the assets in accordance with subpart B of part 4041 of this chapter.

(1) Section 4044.41 sets forth the general provisions of subpart B and applies to all terminating single-employer plans. Sections 4044.51 through 4044.57 prescribe the benefit valuation rules for plans that are placed into trusteeship by PBGC, including (in §§ 4044.55 through 4044.57) the rules and procedures a plan administrator shall follow to determine the expected retirement age (XRA) for a plan participant entitled to early retirement benefits for whom the annuity starting date is not known as of the valuation date. This applies to all trustee plans which have such early retirement benefits. The plan administrator shall determine an XRA under § 4044.55, § 4044.56 or § 4044.57, as appropriate, for each active participant or participant with a deferred vested benefit who is entitled to an early retirement benefit and who as of the valuation date has not selected an annuity starting date.

(2) Sections 4044.71 through 4044.75 prescribe the benefit valuation rules for calculating the value of a benefit to be paid a participant or beneficiary under a terminating pension plan that is distributing assets where the plan has not been placed into trusteeship by PBGC.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34605, June 14, 2011]

#### § 4044.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: annuity, bankruptcy filing date, basic-type benefit, Code, distribution date, earliest retirement age at valuation date, ERISA, expected retirement age (XRA), fair mar-

ket value, guaranteed benefit, insurer, IRS, irrevocable commitment, mandatory employee contributions, nonbasic-type benefit, nonforfeitable benefit, non-PPA 2006 bankruptcy termination, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, single-employer plan, substantial owner, termination date, unreduced retirement age (URA), and voluntary employee contributions.

(b) For purposes of this part:

*Deferred annuity* means an annuity under which the specified date or age at which payments are to begin occurs after the valuation date.

*Early retirement benefit* means an annuity benefit payable under the terms of the plan, under which the participant is entitled to begin receiving payments before his or her normal retirement age and which is not payable on account of the disability of the participant. It may be reduced according to the terms of the plan.

*Non-trusteed plan* means a single-employer plan which is able to close out by purchasing annuities in the private sector

*Priority category* means one of the categories contained in sections 4044 (a)(1) through (a)(6) of ERISA that establish the order in which plan assets are to be allocated.

*Trusteed plan* means a single-employer plan which has been placed into trusteeship by PBGC.

*Valuation date* means (1) for non-trusteed plans, the date of distribution and (2) for trustee plans, the termination date.

(c) For purposes of subpart B of this part (unless otherwise required by the context):

*Age* means the participant's age at his or her nearest birthday and is determined by rounding the individual's exact age to the nearest whole year. Half years are rounded to the next highest year. This is also known as the "insurance age."

(d) For purposes of §§ 4044.55 through 4044.57:

*Monthly benefit* means the guaranteed benefit payable by PBGC.

(e) For purposes of §§ 4044.71 through 4044.75:

*Lump sum payable in lieu of an annuity* means a benefit that is payable in a

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single installment and is derived from an annuity payable under the plan.

*Other lump sum benefit* means a benefit in priority category 5 or 6, determined under subpart A of this part, that is payable in a single installment (or substantially so) under the terms of the plan, and that is not derived from an annuity payable under the plan. The benefit may be a severance pay benefit, a death benefit or other single installment benefit.

[61 FR 34059, July 1, 1996, as amended at 67 FR 16959, Apr. 8, 2002; 74 FR 11035, Mar. 16, 2009; 76 FR 34605, June 14, 2011]

#### § 4044.3 General rule.

(a) *Asset allocation.* Upon the termination of a single-employer plan, the plan administrator shall allocate the plan assets available to pay for benefits under the plan in the manner prescribed by this subpart. Plan assets available to pay for benefits include all plan assets (valued according to § 4044.41(b)) remaining after the subtraction of all liabilities, other than liabilities for future benefit payments, paid or payable from plan assets under the provisions of the plan. Liabilities include expenses, fees and other administrative costs, and benefit payments due before the allocation date. Except as provided in § 4044.4(b), an irrevocable commitment by an insurer to pay a benefit, which commitment is in effect on the date of the asset allocation, is not considered a plan asset, and a benefit payable under such a commitment is excluded from the allocation process.

(b) *Allocation date.* For plans that close out under § 4041.28 or § 4041.50, assets shall be allocated as of the date plan assets are to be distributed. For other plans, assets shall be allocated as of the termination date.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34605, June 14, 2011]

#### § 4044.4 Violations.

(a) *General.* A plan administrator violates ERISA if plan assets are allocated or distributed upon plan termination in a manner other than that prescribed in section 4044 of ERISA and this subpart, except as may be required to prevent disqualification of the plan under the Code and regulations thereunder.

(b) *Distributions in anticipation of termination.* A distribution, transfer, or allocation of assets to a participant or to an insurance company for the benefit of a participant, made in anticipation of plan termination, is considered to be an allocation of plan assets upon termination, and is covered by paragraph (a) of this section. In determining whether a distribution, transfer, or allocation of assets has been made in anticipation of plan termination PBGC will consider all of the facts and circumstances including—

(1) Any change in funding or operation procedures;

(2) Past practice with regard to employee requests for forms of distribution;

(3) Whether the distribution is consistent with plan provisions; and

(4) Whether an annuity contract that provides for a cutback based on the guarantee limits in subpart B of part 4022 of this chapter could have been purchased from an insurance company.

#### ALLOCATION OF ASSETS TO BENEFIT CATEGORIES

#### § 4044.10 Manner of allocation.

(a) *General.* The plan administrator shall allocate plan assets available to pay for benefits under the plan using the rules and procedures set forth in paragraphs (b) through (f) of this section, or any other procedure that results in each participant (or beneficiary) receiving the same benefits he or she would receive if the procedures in paragraphs (b) through (f) were followed.

(b) *Assigning benefits.* The basic-type and nonbasic-type benefits payable with respect to each participant in a terminated plan shall be assigned to one or more priority categories in accordance with §§ 4044.11 through 4044.16. Benefits derived from voluntary employee contributions, which are assigned only to priority category 1, are treated, under section 204(c)(4) of ERISA and section 411(d)(5) of the Code, as benefits under a separate plan. The amount of a benefit payable with respect to each participant shall be determined as of the termination date, but, in a PPA 2006 bankruptcy termination, subject to the limitations in